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Attorneys for Plaintiff Philip Morris USA Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PHILIP MORRIS USA INC.,

Plaintiff,

v.

A & V MINIMARKET, INC., a New York corporation doing business as A & V MINI MARKET, *et al.*,

Defendants.

No. 07 Civ. 8359 (LAK)(GWG)

REQUEST FOR CERTIFICATE OF DEFAULT

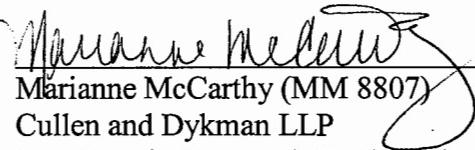
TO THE CLERK OF THE COURT:

Pursuant to Rule 55(a) of the Federal Rules of Civil Procedure and Local Civil Rule 55.1, Plaintiff Philip Morris USA Inc. hereby requests that you enter default in this action against Defendant La Favorita Deli Grocery Corp., a New York corporation doing business as La Favorita Deli Grocery (“La Favorita”). Default should be entered because La Favorita has not answered or responded to the Complaint within the time prescribed by Rule 12 of the Federal

Rules of Civil Procedure or otherwise appeared in this action. The facts justifying the entry of default are set forth in the attached Affidavit of Marianne McCarthy in Support of Request for Certificate of Default, and a proposed Clerk's Certificate of Default is also attached hereto.

Dated: January 25, 2008

CULLEN AND DYKMAN LLP


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v.

No. 07 Civ. 8359 (LAK)(GWG)

A & V MINIMARKET, INC., a New York corporation doing business as A & V MINI MARKET, *et al.*,

Defendants.

AFFIDAVIT OF MARIANNE MCCARTHY
IN SUPPORT OF REQUEST FOR CERTIFICATE OF DEFAULT

STATE OF NEW YORK)
)
 ss.:
COUNTY OF NASSAU)

MARIANNE MCCARTHY, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and am Of Counsel to the law firm of Cullen and Dykman LLP, co-counsel to Heller Ehrman LLP, attorneys for Plaintiff Philip Morris

USA Inc. I am fully familiar with the facts and circumstances surrounding this action. I make this declaration in support of Philip Morris USA Inc.'s request for a Certificate of Default against Defendant La Favorita Deli Grocery Corp., a New York corporation doing business as La Favorita Deli Grocery ("La Favorita"), pursuant to Fed. R. Civ. P. 55(a) and Local Civil Rule 55.1.

2. Upon information and belief, La Favorita is not an infant, in the military, or an incompetent person.

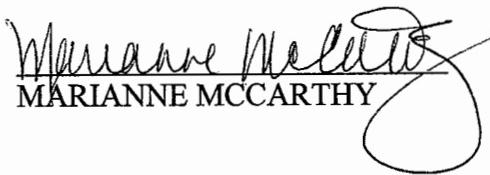
3. Philip Morris USA Inc. commenced this action on September 26, 2007 by the filing of the Summons and Complaint. A true and correct copy of the Summons and Complaint (without exhibits) is annexed hereto as Exhibit A.

4. In accordance with Fed. R. Civ. P. 4(h)(1), Philip Morris USA Inc. effected service of process on La Favorita by serving a copy of the Summons and Complaint on Vincent Urena, a manager and authorized agent of La Favorita, on October 2, 2007, at the business address of 3515 Rochambeau Avenue, Bronx, New York 10459. Furthermore, on October 11, 2007, Phillip Morris USA, Inc. affected service of process on La Favorita by serving a copy of the Summons and Complaint on Jose Martinez, a manager and authorized agent of Law Favorita, c/o ABS & Co. at the business address of 1866 Wood Aveune, Bronz, New York 10460. These facts are set forth in the Affidavit of Service of Bethel Debnam, sworn to October 2, 2007, and Affidavit of Service of Curtis D. Duncan sworn to on October 11, 2007, true and correct copies of which are annexed hereto as Exhibit B.

5. Under Fed. R. Civ. P. 12(a)(1)(A), La Favorita was required to answer or respond to the Complaint no later than October 22, 2007 but, under no circumstances, later then October 31, 2007.

6. La Favorita has not answered the complaint or otherwise defended the action, and the time for La Favorita to do so has expired.

WHEREFORE, on behalf of Philip Morris USA Inc., I respectfully request a Certificate of Default against RHS La Favorita.



MARIANNE MCCARTHY

Sworn to before me this
25th day of January, 2008.



Sharon A. Cuffie
Notary Public

Sharon A. Cuffie
Notary Public, State of New York
No. 01CU6020584
Qualified in Suffolk County
Commission Expires March 01, 20 11

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No. 07 Civ. 8359 (LAK)(GWG)

CLERK'S CERTIFICATE OF DEFAULT

I, J. Michael McMahon, Clerk of the United States District Court for the Southern District of New York, do hereby certify that a copy of the Summons and Complaint in this action, filed September 26, 2007, according to the proof of service, was served upon Defendant La Favorita Deli Grocery Corp., a New York Corporation doing business as La Favorita Deli Grocery ("La Favorita"), in accordance with Rule 4(h)(1) of the Federal Rules of Civil Procedure. In particular, on October 2, 2007, Vincent Urena, a manager and authorized agent of

La Favorita, accepted service of the Summons and Complaint. Furthermore on October 11, 2007, Jose Martinez, a manager and authorized agent of La Favorita, accepted service of the Summons and Complaint.

I further certify that the docket entries indicate that La Favorita has not filed an answer or otherwise moved with respect to the Complaint.

The default by Defendant La Favoritai is hereby noted.

Dated: New York, New York

_____, 2008

J. Michael McMahon
Clerk of the Court

By: _____
Deputy Clerk